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6

After the Law

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There are peculiar difficulties associated with any philosophy of law, due in large part to the inevitability that any attempt at a transcendent evaluation of law finds itself enacting a parody of judicial process. Ever since the trial of Socrates (if not already with the fragment of Anaximander), philosophy has affirmed its vocation only insofar as it has fantasised a supreme tribunal: an ultimate court of appeal or ideal form of justice. The vindication of Socratism is inextricable from a retrial, both exculpation and counterlitigation, the forum of which remains the unstable *issue* of metaphysics. As for its 'own' or 'inner' law, logic has never been anything other than the distillation of juridical procedure, the abstract form of inclusion or non-inclusion of a case under a law (species under genus), which has been predominantly thematised as *judgment*, although a language of *propositions* has more recently risen to prominence. Philosophy and judicial authority find themselves bound together in a discourse upon real legitimation. Appearances (cases) are to be judged from the perspective of a generic reason at a superior level of reality, identified in the premodern period with an ideality whose final term is the intellect of God. Aristotle consummates a categorial – accusatory – sense of form, and the Augustinian collision of Platonism with Judaeo-Christian eschatology and Christian *logos* has only entrenched this complicity.

This chapter cuts into two episodes or intersections of the occidental juridico-philosophical complex, in an attempt to dramatise the broadest tendency of its process: that of collapse towards immanence, or evaporation of the transcendent. There is nothing peculiarly occult or mysterious about such a tendency, since it finds its most highly accelerated phase in our contemporary marketisation of social transactions: the phased transition from traditional theopolitical authorisation or *legitimacy* to an impersonal, cybernetically automated *efficiency*. The commodity 'form' is a transmutational matrix, and not a static (synchronic) order of economic liberalism. Insofar as capital is still interpreted Platonically – according to

legitimation criteria – there is an overt paradox or contradiction emergent in this process, a paradox whose disappearance is epitomised by the figure of Georges Bataille, who offers an *operational description of law*. Bataille no longer offers a juridical procedure of any kind, but only a tactics of recoding that converges upon the outside of human history (where everything functions without respect or legitimacy).

Those seeking to defend the human management of social processes (where ‘man’ speculatively unites with the God of anthropomorphic monotheism) can have no project but to restore a *history* whose ideal sense would reconnect with the *meaning of the West*, such as those proffered by Plato, Aquinas and Hegel. Such restoration is a modernist aspiration which strikes me as incredible. To drag Plato and Bataille before the tribunal of philosophy has ceased to be anything but entertainment, yet I dedicate this text to the few remaining political animals of the planet Earth, as an experiment in the tenacity of philosophy, or as a jest.

PLATO AND THE TRIAL OF SOCRATES

Plato’s *Apology* is initiated by submission to the political, in which civic obedience and justificatory discourse are fused. Rebellion is not Socratic, and the principle of authority – or right to judge – is never radically interrogated; only its source is in question. In attempting to contest the charge that he ‘makes the weaker argument defeat the stronger’ (Plato, 1969, p. 47), it is not long before Socrates invokes the ‘unimpeachable authority’ (Plato, 1969, p. 49) of Apollo, and narrates the journey of his disciple Chaerephon:

one day he actually went to Delphi and asked this question of the god – as I said before, gentlemen, please do not interrupt – he asked whether there was anyone wiser than myself. The priestess replied that there was no one. (Plato, 1969, p. 49)

To interpret this statement as a submission of evidence would be to efface the fracture line between the sacred and the profane across which Socrates steps. It is precisely the resistance to evidentiality that lends to this message its oracular force, and the paradoxical gesture at the heart of Socrates’ defence is that of deploying the privilege of the unknown on behalf of knowing.

The mystery of the oracular message is registered within the order of judgment as an underinterpretation. The priestess’s words require translation, beyond that of their reworking into verse that occurs at Delphi itself. They pose a problem that can be construed as exegetical, as an insufficiency of commentary and resolution. Words are oracular precisely insofar as they suspend intelligence, whether in the sacred abandonment to unknowing which is their source, or in the profane detour of philosophy

that becomes their destination. Socrates’ discourse is the site of a crossing from inspiration to anticipated wisdom.

It is not only words of the Delphic oracle that are at stake here, since they resonate with the more intimate counsel of Socrates’ *δαίμων* or ‘spirit’. Later in the *Apology*, we are told by Socrates that:

I am subject to a divine or supernatural experience, which Meletus saw fit to travesty in his indictment. It began in my early childhood – a sort of voice which comes to me; and when it comes it always dissuades me from what I am proposing to do, and never urges me on (Plato, 1969, p. 64)

The interference between the sacred and the profane, the unknown and knowing, is in its sacred sense a gateway opening onto death, and in its profane sense a hesitation: interruption as the edge of time or as a delay within time, death as the outside or as the deferred, the threshold of death as a brink or as a moment. Later in the *Apology*, Socrates reports that ‘I am now at that point where the gift of prophecy comes most readily to me: at the point of death’ (Plato, 1969, p. 73). This remark connects strangely with the earlier comment that

I soon made up my mind about the poets too: I decided that it was not wisdom that enabled them to write their poetry, but a kind of instinct or inspiration, such as you find in seers and prophets who deliver all their sublime messages without knowing in the least what they mean. (Plato, 1969, p. 51)

Poets and prophets explore the zero-degree of judgment, a zone at the edge of the great zero that Socrates tentatively sketches, but only rarely approaches. His own sense of ‘preparation for death’ is the path of wisdom rather than intoxication, aligning himself with a knowing that is compared to its inadequate instances, rather than succumbing to the unknowing beyond comparison beside which all knowing is inadequate. Comparing himself to his fellows, Socrates elaborates the oracle as suggesting that ‘I am wiser ... to this small extent, that I do not think I know what I do not know’ (Plato, 1969, p. 50). This is the edge of the unknown, but always there is the gesture of recuperation to knowing, to judgment, to the tribunal, justice and authority: ‘real wisdom is the property of God, and this oracle is his way of telling us that human wisdom has little or no value’ (Plato, 1969, p. 52). If human wisdom has little or no value, where do the dogmatic assertions about God and his wisdom stem from? Why should they be trusted? Is not the figure of God indistinguishable from the claim that we know it is knowledge that matters, that the unknown is something we know, something we can populate with our feverish anthropomorphisms? Does Socrates not exhibit God as the eclipse of religion, the surrender of knowing as a submission to ... knowing? It is thus that religion is buried beneath the icon of a supreme judge.

The figure of Socrates, as sketched for us by Plato – his advocate – is that of philosophy on trial. It is in crossing this judicial threshold that philosophy comes to delight in the voluptuousities of persecution. Yet the drama of Socrates' condemnation distracts from the more far-reaching process whereby philosophy succumbs to the order of the courtroom, and with this process Socrates is deeply complicit. He could even be said to have forged a new alliance between knowledge and condemnation, as well as becoming the first philosophical *case*.

How could one imagine an *Apology* for a Herakleitus, an Empedokles, or a Parmenides? To whom would they be attempting to justify themselves? To the *people*? The thought is absurd. For what does the opinion of the people matter? It was precisely as an escape from the opinion of the people that philosophy emerged! To philosophise and to ignore popular opinion are scarcely differentiable. If the Presocratics speak in terms of cosmic justification – as Anaximander already does – it is as a concession, in order that the people will at least understand the surpassing of human judgment, if not that by which it is surpassed. The harsh 'justice' of fate is the ironisation of human litigation, and not its inflation to the absolute (monotheism).

With Socrates, things are different. Philosophy becomes dialectical; which is to say justificatory, political, logical, plebeian. Truth is identified with irrefutability, evidentiality and educated belief, beginning its long subsidence into the forms of human credence, as if its acceptability were in any way a criterion.

The *Apology* focuses a multiple interweaving of death and judgment. There is first of all the sense in which death fulfils judgment in the sentence of death, even if this is an injustice – or misjudgment – such that Athens is condemned in the tribunal of the Platonic text, whose judgment in this case becomes a massively influential precedent. There is a nesting of judgments; that of Socrates, that of Athens and that of Plato, with each level subsuming the antecedent one as an item or case to be judged.

Judgment is the subsumption of a case under a principle or law. It is classificatory or categorising, according to a discursive order which is simultaneously juridical and logical. The very word 'category' is derived from the Greek word *κατηγορος*, or accuser. Judgment is thus an image of thought, and Plato's entire philosophy can be read as an appeal to a higher court, as an obsessive retrial, as well as a counteraccusation against Socrates' executioners. The democracy which sentenced Socrates to death is not merely vilified by Plato, it is also categorised within a taxonomy of political forms, brought to an ulterior site of judgment and included within an expanded system.

A second integration of judgment with death is suggested at this point. If Athens misjudges Socrates, it is because it misjudges death and the

death sentence, by construing death as a punishment. Death is judged from the perspective of a restricted arena – that of the Athenian court and democratic polity – which is subordinate in principle, logically and juridically, to a tribunal that includes such an arena as a case, item or species. It is in this way that Plato comes to interpret sensible existence as a specification of intelligence; as a restricted forum demarcated within the total field of intelligibility. Death is a boundary which isolates sensible intelligence from the general system of knowing, the species from the genus, the case from the principle of Idea. The juridical advantage of the philosopher – qualifying him to rule in an ideal republic – is that he 'frees his soul from association with the body (so far as is possible) to a greater extent than other men' (Plato, 1969, p. 109). Death is no longer being thought as a consequence of judgment, but as its justifying condition. Judgment is disqualified by its specification to sensibility, since the sensible instance or case is comprehended by the superior generic order of the ideal, which is unrestricted by the sensible limit of death.

In its migration through a succession of bodies, the soul crosses and recrosses between life and death, passing in and out of restricted spaces, although never escaping the irreducible atom of self. One might accept Socrates' depiction of life as the phase during which the soul is 'chained hand and foot in the body, compelled to view reality not directly but only through its prison bars, and wallowing in utter ignorance' (Plato, 1969, p. 135), and still want to insist that the soul is a cage which is even more insidious, constricting and wretched than the body. The soul is the fantasy of a separation from death that persists in death, a kind of corporeal telepresence by which the body projects its servile categories into the unknown. But this is to interrupt Socrates' account.

The thought of knowledge as a recollection reaching beyond birth is most fully developed in the *Phaedo*, where the complicity between his conception of death and that of an adequate tribunal is emphatic. The approximation to wisdom under the specifications of life can only be a preparation for death, an anticipatory harmonisation with the escape from sensible existence:

If at its release the soul is pure and carries with it no contamination of the body, because it has never willingly associated with it in life, but has shunned it and kept itself separate as its regular practice – in other words, if it has pursued philosophy in the right way and really practised how to face death easily: this is what 'practising death' means, isn't it? (Plato, 1969, p. 133)

According to the judgment of death, by which all human judgments are judged, only the philosopher is just, because only he recognises the specificity of all sensible judgments, and their subsumption within a higher genus of wisdom: 'no soul which has not practised philosophy, and

is not absolutely pure when it leaves the body, may attain to the divine nature; that is only for the lovers of wisdom' (Plato, 1969, p. 135). The strongest expression of this though is probably to be found in an earlier passage from the *Phaedo*:

the wisdom which we desire and upon which we profess to have set our hearts will be attainable only when we are dead, and not in our lifetime. If no pure knowledge is possible in the company of the body, then either it is totally impossible to acquire knowledge, or it is only possible after death ... (Plato, 1969, p. 111)

This introduces a third integration between judgment and death, through which Socrates decides against the sacred and in favour of the profane, because death is to be judged. This is to say that death is only to be an issue from the optic of knowing, from that of the philosopher or wise judge rather than the poet or the visionary. Here we arrive at the most mysterious and fateful twist in Socrates' interpretation of the oracle:

to be afraid of death is only another form of thinking that one is wise when one is not; it is to think that one knows what one does not know. No one knows with regard to death whether it is not really the greatest blessing that can happen to a man; but people dread it as though they were certain that it is the greatest evil; and this ignorance, which thinks that it knows what it does not, must surely be ignorance most culpable. This, I take it gentlemen, is the degree, and this is the nature of my advantage over the rest of mankind; and if I were to claim to be wiser than my neighbour in any respect, it would be in this: that not possessing any real knowledge of what comes after death, I am also conscious that I do not possess it. (Plato, 1969, p. 60)

By interpreting contact with the unknown as the deferral of judgment by the subject, translating the positivity of sacred confusion into the negativity of epistemic uncertainty, Socrates initiates the proper history of the West. The Socratic sophism runs: either one already knows death (since it is only the cessation of life), or death is a higher knowing. Death is either the extinction that makes it nothing except what life knows of it, or the immortality of the soul that preserves knowing in death as entry into knowledge of the Ideas. If death is the unknown, it is only insofar as we do not know that there is nothing to know; but, were there an unknown other than as a hidden or forgotten knowledge, it would still only be what we already know as the end of knowing. This is Socrates' own reading of his claim to be conscious that he does not know: a repression of the unknown.

While ultimately returning the problem of death to knowing (philosophy to sophism), this passage is not without its sceptical openings. Most importantly, it suggests that the conception of personal mortality is an icon of death that must be ironised from the perspective of unknowing. In

this way, the optic of the court is momentarily refused, and death prised away from its punitive sense. Socrates mocks those who act as if 'they would be immortal if you did not put them to death!' (Plato, 1969, p. 68).

The court is no more capable of judging death than judging Socrates, since it is in both cases ignorant as to its own ignorance, and therefore iconic. It lacks even the space of the question, having satisfied itself overhastily with an array of pseudo-knowledges or unexamined opinions that substitute for difficulties. As Socrates interprets things, the Athenian court, having judged the punishment as incompetently as the defendant, accidentally rewards an innocent man, rather than persecuting a guilty one. Death has been judged badly, but Socrates does not conclude from this that it escapes judgment; it is rather that it requires a more appropriate tribunal: a philosophical forum open to the perfect evidence of the intelligible, uncluttered by the deceit and confusion of the sensible world. It is this conjunction of philosophy with death – philosophy as the fair trial of death which avoids precipitate condemnation – that completes the inversion of the Athenian trial. It is no longer that death confirms the judgment of the city; instead, it carries the philosophical dialectic forwards to its destination:

Ordinary people seem not to realise that those who really apply themselves in the right way to philosophy are directly and of their own accord preparing themselves for dying and death. If this is true, and they have actually been looking forward to death all their lives, it would of course be absurd to be troubled when the thing comes for which they have so long been preparing and looking forward. (Plato, 1969, p. 107)

If Socrates is in part an ironist and an iconoclast, he is also a zealot and a dogmatist. He disrupts one trial in order to replace it with another, mocks human judgment in order to replace it with divine judgment, subverts sophistry in order to replace it with a higher sophistry, and disengages himself from this world only to bind himself more tightly to another; to 'the unseen world' (Plato, 1969, p. 136) or 'the next world' (ibid., p. 179), to the realm of that which 'is invisible and hidden from our eyes, but intelligible and comprehensible by philosophy' (ibid. p. 133). Socratism is the mobilisation of unknowing on behalf of knowing; subordinating irony to dialectic, confusion to judgment, and the sacred to a subtilised profanity.

There is a sense in which Socrates already floats a fourth – and far more corrosive – integration of judgment and death, according to which death is the suspension of judgment. Death is a problem that interrupts the judicial process, switching it into a dialectical detour which prolongs the path before arrival at a verdict. Resisting sensible evidentiality, death contests the conventional procedures of its trial. Typically enough, Socrates moralises

this issue into a farce, asking whether death is good or evil. Nevertheless, death suspends justice in a hesitant unknowingness, even if this is only a dialectical vacillation between pre-established alternatives. For Socrates, death is recuperable to judgment, in a movement by which it is transcended by the idea; but this return of interruption to due process is not without its limit.

BATAILLE AND THE TRIAL OF GILLES DE RAIS

Whereas Plato is a midwife of the profane, establishing the intellectual coordinates of a transcendent reason that will dominate the juridico-philosophical discourses of post-Hellenic societies for two millennia, Bataille is driven by a passion for (and from) the sacred to explore the most extreme formulations of a philosophy of immanence. In a broadly Nietzschean fashion, he interprets law as the imperative to the preservation of discrete being. Far from expressing a transcendent ideality, law summarises conditions of existence, and shares its arbitrariness with the survival of the human race as sovereign autonomy (an expression that Bataille seeks to exhibit as an oxymoron). The word which Bataille usually employs to mark the preserve of law is 'discontinuity', which is broadly synonymous with 'transcendence', or the space of judgment. Discontinuity – read immanently or genealogically – is the condition for transcendent illusion or ideality, and precisely for this reason it cannot be grasped by a transcendent apparatus; by the interknitted series of conceptions involving negation, logical distinction, simple disjunction, essential difference, etc. Discontinuity is not referred in the direction of a separated or metaphysical realm, but in that of a precarious distance from death: a space of profane accumulation that is juxtaposed messily with the sacred flow into loss. Religion is thus extricated from theology in order to be connected with an energetics or 'solar economy', according to which the infrastructure of discontinuity inheres in the obstructive character of the Earth, in its mere bulk as a momentary arrest of solar energy flow, which lends itself to hypostatisation. When the silting-up of energy upon the surface of the planet is interpreted by its complex consequences as rigid utility, a productivist civilisation is initiated, whose culture involves a history of ontology and a moral order; persistent being and judgment. Systemic limits to growth require that the inevitable recommencement of the solar trajectory scorches jagged perforations through such civilisations. The resultant ruptures cannot be securely assimilated to a metasocial homeostatic mechanism, because they have an immoderate, epidemic tendency. Bataille writes of 'the virulence of death' (1987, p. 70). Expenditure is irreducibly ruinous because it is not merely useless but also contagious. Nothing is more infectious than the passion for collapse.

In *The Accursed Share*, Bataille outlines a number of social responses to the unsublatable wave of senseless wastage welling up beneath human endeavour, which he draws from a variety of cultures and epochs. These include the potlatch of the sub-Arctic tribes, the sacrificial cult of the Aztecs, the monastic extravagance of the Tietans, the martial ardour of Islam, and the architectural debauch of hegemonic Catholicism. Reform Christianity alone – attuned to the emergent bourgeois order – is based upon a relentless refusal of sumptuary consumption. It is with Protestantism that theology accomplishes itself in the thoroughgoing rationalisation of religion, marking the ideological triumph of the good, and propelling humanity into unprecedented extremities of affluence and catastrophe. It is also with Protestantism that the transgressive outlets of society are deritualised and exposed to effective condemnation, a tendency which leads to the explosions of atrocity associated with the writings of the Marquis de Sade at the end of the eighteenth century and, almost three centuries before that, with the life of Gilles de Rais.

Bataille describes his 1959 study of Gilles de Rais as a tragedy, and its subject as a 'sacred monster', who 'owed his enduring glory to his crimes' (Bataille, 1987, p. 277). The bare facts are quite rapidly outlined. Gilles de Rais was born towards the end of the year 1404, inheriting the 'fortune, name and arms of Rais' (ibid., p. 345) due to a complicated dynastic intrigue involving his parents, Guy de Laval and Marie de Craon. Even by the standards of his times and rank, de Rais dissipated vast tranches of his wealth with abnormal extravagance; in Bataille's words, 'he liquidated an immense fortune without reckoning' (ibid., p. 279). At the battle of Orléans, he fought alongside Jeanne d'Arc, 'acquiring renown as "a truly valiant knight in arms" which survived right up to the point of his condemnation to infamy' (ibid., p. 354). It has been suggested that the two warriors were friends, but Bataille expresses reservations about this hypothesis (ibid., p. 356). On 30 May 1431, Jeanne d'Arc was burnt by the English. In the years 1432–3, de Rais began to murder children. His preferred victims were males, with an average age of eleven years, there was occasional variation in sex and considerable variation in age (ibid., p. 426). At least thirty-five murders are well established, although the number was almost certainly a great deal higher; the figures suggested at his trial ranged up to 200.

In a somewhat inelegant passage from this study, Bataille recapitulates the (quasi-Weberian) general economic background to his researches:

We accumulate wealth in the prospect of a continual expansion, but in societies different from ours the prevalent principle was the contrary one of wasting or losing wealth, of giving or destroying it. Accumulated wealth has the same sense as *work*; wealth wasted or destroyed in tribal *potlatch* has the contrary sense of *play*. Accumulated wealth has

nothing but a subordinate value, but wealth that is wasted or destroyed has, to the eyes of those who waste it, or destroy it, a *sovereign* value: it serves nothing ulterior; only this wastage itself, or this fascinating destruction. Its *present* sense: its wastage, or the gift that one makes of it, is its final reason for being, and it is due to this that its sense is not able to be put off, and must be *in the instant*. But it is consumed *in that instant*. This can be magnificent those who know how to appreciate consumption are dazzled, but nothing remains of it. (Bataille, 1987, pp. 321–2)

The tragedy of de Rais, which Bataille extends to the nobility as a whole, was that of living the transition from sumptuary to rational sociality. He was dedicated by birth to the reckless militarism of the French aristocracy, which Bataille summarises in the formula: 'In the same way that the man without privilege is reduced to a worker, the one who is privileged must wage war' (ibid., p. 314). He is emphatic on this point: 'The feudal world ... is not able to be separated from the lack of measure [démésure], which is the principle of wars' (ibid., p. 316), and also: 'primitively war seems to be a luxury' (ibid., p. 78). That honour and prestige are incommensurable with the calculations of utility is an insistent theme in Bataille's work, as pertinent to the interpretation of potlatch among the Tlingit as to the blood-hunger and extravagance of Europe's medieval nobility. The context of Christianity and courtly love should not mislead us here.

The paradox of the Middle Ages demanded that the warrior elite did not speak the language of force and combat. Their mode of speech was often sickly-sweet. But we shouldn't fool ourselves: the goodwill of the ancient French was a cynical lie. Even the poetry that the nobles of the XIVth and XVth centuries affected to love was in every sense a deception: before everything the great lords loved war, their attitude differed little from that of the German Berzerkers, whose dreams were dominated by horrors and slaughter. (ibid., pp. 303–4).

For Socrates, war is understood as civic duty: a preservative function of the city. When the city wages war, it is to be judged as a moral act, following the dictates of reason to a greater or less extent. This is the dialectical image of war, fostered by the Church, and exercising a fascination over Hegel (not to mention post war American administrators). There is a principle of commensurability that binds military and judicial violence, permitting both to follow from a logically orchestrated procedure of political judgment. Bataille's suggestion is quite different, since his figure of war is a zone of disappearance, a passage to the unknown, through which the city communicates with its ultimate impossibility. It is not that war is treated as a metaphor by Bataille (any more than by

Nietzsche), but rather that all historical and intelligible evidence is a metaphor for war as an energetic function of death (descent to the unknown = degree zero). War exceeds judgment, since every judicial apparatus is a petrified war, just as every 'case' of war is a domestication politicised, utilitarianised, Clausewitzianised. At the end of war there is only senseless death, where judgment counts for nothing.

The feudal aristocracy held open a wound in the social body, through which excess production was haemorrhaged into utter loss. In part, this wastage was accomplished by the hypertrophic luxuriance of their leisured and parasitic existence, which echoed that of the Church, but more important was the ceaseless ebb and flow of military confrontation, into which life and treasure could be poured without limit. De Rais embraced this dark heart of the feudal world with peculiar ardour. Bataille writes of his entire – his mad – incarnation of the spirit of feudalism which, in all of its movement, proceeded from the games that the Berzerkers played: he was tethered to war by an affinity that succeeded in marking out a taste for cruel voluptuosities. He had no place in the world, if not the one that war gave him. (ibid., p. 317).

He continues: 'Such wars required intoxication, they required the vertigo and the giddiness of those that birth had consecrated to them. War precipitated its elect into assaults, or suffocated them in dark obsessions' (ibid., p. 317).

During the fourteenth and fifteenth centuries, the epoch of feudal warfaring reached a crescendo, due to exactly the same processes that were leading to its utilitarian reconstruction. Power was being steadily centralised in the hands of the monarchy, and changes in military technology effected a gradual shift in the social composition of the military apparatus. In particular, Bataille points to the way in which the development of archery supplanted the dominant role of heavy cavalry, and to the fact that with the increasing importance of arrows and pikes came an accentuation of military discipline. War became increasingly rationalised and subjected to scientific direction. This evolution was not rapid, but de Rais was personally touched by it. The battle of Lagny in 1432 was the last to plunge him into the heat of conflict, after which his position as a marshal of France – which he had occupied since July 1429 – detached him from the military cutting edge. Bataille's interpretation of these tendencies is emphatic:

[A]t the instant where royal politics and intelligence alters, the feudal world no longer exists. Neither intelligence nor calculation is noble. It is not noble to calculate, not even to reflect, and no philosopher has been able to incarnate the essence of nobility. (ibid., p. 318)

War is progressively disinvested by the voluptuary movement passing

through the nobility, increasingly becoming an instrument of rational statecraft, calculatingly manipulated by the sovereign. A process was under way that would lead eventually to the tightly regimented military machines of Renaissance Europe, led by professional officers and directed by their operations in accordance with political pragmatics. Bataille considers this transition from warlord to prince to be crucial in de Rais's case:

To the eyes of Gilles war is a game. But that view becomes less and less true: to the extent that it ceases to be predominate even amongst the privileged. Increasingly, therefore, war becomes a general misfortune: at the same time it becomes the *work* of a great number. The general situation deteriorates: it becomes more complex, the misfortune even reaching the privileged, who become ever less avid for war, and for games, seeing in the end that the moment has come to lend space to problems of reason. (ibid., p. 315)

Where the Church erected cathedrals in a disfigured celebration of the death of God, the nobility built fortresses to glorify and to accentuate the economy of war. Their fortresses were tumours of aggressive autonomy; hard membranes correlative with an acute disequilibrium of force. Within the fortress, social excess is concentrated to its maximum tension, before being siphoned off into the furious wastage of the battlefield. It was into his fortresses that de Rais retreated, withdrawing from a society in which he had become nothing, in order to bury himself in darkness and atrocity. The children of the surrounding areas disappeared into these fortresses, in the same way that the surplus production of the local peasantry had always done, except now the focus of consumption had ceased to be the exterior social spectacle of colliding armies, involuting instead into a sequence of secret killings. Rather than a staging post for excess, the heart of the fortress became its terminus; the site of a hidden and unholy participation in the nihilating voracity which Bataille calls 'the solar anus', or the black sun.

The words 'no philosopher has been able to incarnate the essence of nobility' are a concise anti-Socratism. There is no nobility in judgment or accusation, but rather an impoverishing separation from the inarticulacy of death. It cannot be a matter of a retrial therefore, as if a higher judgment were to redeem a victim of injustice: de Rais is almost perfectly indefensible. No case could be more clear-cut. Perhaps one short passage will suffice in lieu of detailing these monstrosities. Early in his study, Bataille remarks:

His crimes responded to the immense disorder which inflamed him, and in which he was lost. We even know, by means of the criminal's confession, which the scribes of the court copied down whilst listening to him, that it was not pleasure that was essential. Certainly

he sat astride the chest of the victim and in that fashion, playing with himself [se maniant], he would spill his sperm upon the dying one; but what was important to him was less sexual enjoyment than the vision of death at work. He loved to look: opening a body, cutting a throat, detaching limbs, he loved the sight of blood. (ibid., p. 278)

An *Apology* for de Rais is an absurdity. He cannot be justified, and picking over his case can only be a nauseous reaffirmation of profane justice, or a vertiginous descent into the madness of the sacred. Among the problematic features of this passage, for instance, is the fact that it slices violently across the terms of Bataille's writings, where the prevailing sense of 'work' is exactly that of a resistance to death. He describes work as the process that binds energy into the form of the resource, or utile object, inhibiting its tendency to dissipation. This difficulty is exacerbated by the central role allocated to vision in Gilles's atrocities. Work constrains the slippage towards death, but it conspires with visibility. Scopic representation and utility are mutually sustained by objectivity, which Bataille understands as transcendence; the crystallisation of *Things* from out of the continuum of immanent flow. There is a virtual inanity to Gilles's aberration, therefore, which is attested by the fact that it is not the taste or smell of death that he seeks, but its sight, or representation.

Is not de Rais, at this moment, portrayed as an experimental Socrates, as an autonomous subject who would open a tribunal, collate evidence, judge a death that he transcends? Where is the military furor, the black-out intimacy with death, through which an unsupportable separation is collapsed into solar immanence? It is not merely a case that judgment stumbles upon here, but a ruinous metaphor for itself.

De Rais on trial is only Socrates becoming Baconian, which is why the 'object' of Bataille's text is the sumptuary current of feudalism – that which was unsocialisable by precommoditocratic civilisation – and not the accused person through which this movement found an outlet. Death has no representatives, which is to say that crime has no real subject. There is only the sad wreck whom Nietzsche calls 'the pale criminal', de Rais at his trial for instance, terrified of Satan, separated from his crimes by an unnavigable gulf of oblivion. The truth of such criminality, at once utterly simple and yet ungraspable, is that evil does not survive to be judged.

The profound criminality that Bataille sometimes names 'transgression' is not merely culpable or antisocial behaviour, insofar as this latter involves private utility or the occupation by a subject of the site of proscribed action. It is rather the effective genealogy of law, operating at a level of community more basic than the social order which is simultaneous with legality. Transgression is only judged *as such* in the course of a regression to a prehistorical option which was decided by the institution

of justice. At this point, the sedimentation of energy upon the crust of the earth becomes normatively reinforced by an affirmation of social persistence. Nietzsche explores exactly this issue in § 9 of the second essay of his *Genealogy of Morals*, in which he describes the primitive response to transgression:

'Punishment' at this level of civilization is simply a copy, a *mimus*, of the normal approach toward a hated, defenceless, prostrated enemy, who has not only lost every right and protection, but is also deprived of all mercy; *vae victis* as the right of war and festivity of victory, in all its ruthlessness and cruelty – from which it is clear why war itself (including the warlike cult of sacrifice) has provided all the *forms* under which punishment has emerged throughout history. (Nietzsche, 1981, p. 813)

War is irreducibly alien to a collision of rights, so that it is war that bears down on the one who violates right as such. Transgression is not a misdemeanour, even if this is the necessary form of its social interpretation. It is rather a solar barbarism, resonant with that of the Berserkers, and of all those who fathom an abysmal inhumanity on the battlefield, becoming derelicted conduits of the impossible. There is no tragedy without an Agamemnon, or some other mad beast of war, whose nemesis preempts the discourse of the juridical institution, and whose death is thus marked by a peculiar intimacy, even though it is never commensurable with propriety. For we would not recognise this war that comes from beyond the city and after the law, this movement without essence or precedent which is perhaps already guiding us, a movement without utility, ideology or motivation, forsaking melodrama for the true violence of the *insidious*; of infiltration, subversion, larval metamorphosis and phase-change. After the law, across the line of unknowing, where tribunals count for nothing, Socrates is silent, and accusation is dissolved into the sun. De Rais is merely the botched and humane anticipation of a tragedy which is no longer ours:

Tragedy is the impotence of reason. ... This does not signify that Tragedy has rights against reason. In truth, it is not possible for a right to belong to something contrary to reason. For how could a *right* be opposed to reason? Human violence however, which has the power to go against reason, is tragic, and must, if possible, be suppressed: at least it cannot be ignored or despised. It is in speaking of Gilles de Rais that I come to say this, for he differs from all those for whom crime is a personal matter. The crimes of Gilles de Rais are those of the world in which they are committed, and these ripped throats are exposed by the convulsive movements of such a world. (Bataille, 1987, p. 319)

CONCLUSION

In its virtual truth, law has already disappeared from the Earth. What remains of 'law' is a dissolving complex consisting of relics from political sociality, nostalgic media-driven theatre, and pre-automatised commodification protocols. All appeals to a 'criminality' irreducible to the impersonal consequences of social/psychological pathology have degenerated to the level of television evangelism. Among the educated, 'freedom' has lost all its Christian-metaphysical pathos, to become the stochastic market-intervention patterns of desolidarised (contractually disaggregated) populations. The legal suppression of the sex and drugs industries, for instance, is increasingly exhibited as an overt farce perpetrated by the economically illiterate, and leading only to perverse effects such as the growth of organised crime, the corruption of social institutions, deleterious medical consequences and a rapidly growing contempt for the legislature, judiciary and police by groups whose consumption processes are incompetently suppressed. The post civilisational pragmatism of immanence to the market (anonymous resource distribution) reiterates its own juridical expression as an increasingly embarrassing archaism, preserving law only by functionalising legality in terms that subvert its claim to authority. As domination loses all dignity, the state becomes universally derided, exhibited as the mere caretaker for retarded sectors of behavioural management.

It is in the context of such runaway immanentisation that the contemporary cult of the 'serial killer' – prefigured by Bataille's portrait of de Rais – is to be understood. The psychopathic murderer is both the final justification for law and the point of transition from evil to pathology from the criminal soul of political societies to the software disorder of commodity-phase population cybernetics. Bataille's Gothic aesthetic cannot hide the distance traversed in two-and-a-half millennia of erratically developing 'Socratism', or rationalistic desolidarisation. While Plato's Socrates is a judge *because he might have been a criminal* Bataille's de Rais is an economic control malfunction.

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The translations from Bataille and Nietzsche are my own.